

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VIOLET VOLPINI	:	CIVIL ACTION
	:	
v.	:	
	:	No. 00-CV-5888
L'AUBERGE DEL MAR	:	
	:	

ORDER - MEMORANDUM

Ludwig, J.

AND NOW, this 20th day of February, 2001, the motion of defendant L'Auberge Del Mar to dismiss for lack of personal jurisdiction is granted. Fed. R. Civ. P. 12(b)(2). Subject matter jurisdiction is diversity. 28 U.S.C. § 1332.

The facts alleged in this personal injury action, as set forth in the complaint, are as follows. On December 4, 1998, plaintiff Violet Volpini, a Pennsylvania resident, attended a wedding reception at L'Auberge Del Mar, a hotel in Del Mar, California. Cmpl't. ¶¶ 1-3. While she was dancing, the heel of her shoe became caught in a crack on the floor, causing her to fall and sustain injuries. Id. ¶¶ 8, 10-11.

As movant, defendant submitted the affidavit of Leanne Talmage, stating that she is the corporate secretary of L-O Del Mar Hotel, Inc., the owner/operator of defendant resort; that the corporation is not incorporated or registered to do business in Pennsylvania; does not own property, maintain offices, pay taxes, or conduct business in Pennsylvania; and does not target advertising or solicit guests specifically from Pennsylvania. In response, plaintiff has offered argument but no evidentiary matters.

To determine whether personal jurisdiction exists over an out-of-state defendant,

a federal court sitting in diversity must undertake a two-step inquiry. First, the court must apply the relevant state long-arm statute to see if it permits the exercise of personal jurisdiction; then, the court must apply the precepts of the Due Process Clause of the Constitution. In [Pennsylvania], this inquiry is collapsed into a single step because the . . . long-arm statute permits the exercise of personal jurisdiction to the fullest limits of due process.

IMO Indus. Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998).

Under Pennsylvania's long-arm statute, there are two independent sources of personal jurisdiction, 42 Pa. C.S.A. §§ 5301, 5322. A nonresident is subject to general jurisdiction if its contacts with the forum are "continuous and substantial," even if the cause of action does not relate to those contacts. Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 200 (3d Cir. 1998) (quoting Provident Nat'l Bank v. California Federal Savings & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987)). On the other hand, regardless of general jurisdiction, "[s]pecific personal jurisdiction exists when the defendant has 'purposefully directed [its] activities at residents of the forum and the litigation results from alleged injuries that arise out of or related to those activities.'" BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985)).

When personal jurisdiction is challenged, a plaintiff must present a prima facie case of jurisdiction by "establishing with reasonable particularity sufficient contacts between defendant and the forum state." Mellon Bank (East)

PSFS, Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (quoting Provident Nat'l Bank, 819 F.2d at 436). “[P]laintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence. . . . [P]laintiff must respond with actual proofs, not mere allegations.” Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984).

Here, given the occurrence of the accident in California, specific jurisdiction is insupportable, see Provident Nat'l Bank, 819 F.2d at 437, and plaintiff has not produced evidence to show a predicate for general jurisdiction. Instead, plaintiff infers from Talmage’s affidavit that defendant engages in national advertising, and, therefore, “may have advertised in Pennsylvania seeking business from residents of the District.”¹ Pltf. mem. at 2. This reasoning falls far short of plaintiff’s burden to sustain general jurisdiction – i.e., to show “significantly more than mere minimum contacts.” Provident Nat'l Bank, 819 F.2d at 437; Reliance Steel Prods. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 589 (3d Cir. 1982) (the facts must be “extensive and persuasive”). Moreover, it is well-settled in our Circuit that national advertising, by itself, does not establish

¹ The affidavit:

14. Hotel does not target or actively solicit guests specifically from Pennsylvania.

15. Any national advertising hotel might place is not and has never been purposefully directed at Pennsylvania.

Talmage aff. at 2. According to plaintiff, “[b]y the equivocations [sic] contained in those two statements it appears there was national advertising and while it may not have ‘been purposefully directed at Pennsylvania’, the purpose of any national advertising is to expose and to solicit business in whichever states in which the advertising has occurred.” Pltf. mem. at 2.

minimum contacts.² See, e.g., Gehling v. St. George's School of Medicine Ltd., 773 F.2d 539, 542 (3d Cir. 1985) (advertisement in the “New York Times” and the “Wall Street Journal” insufficient to show minimum contacts with Pennsylvania); Reliance Steel, 675 F.2d at 589 (advertising in national or international newspapers or magazines does not constitute “continuous and substantial” contacts with the forum state); Scheidt v. Young, 389 F.2d 58, 60 (3d Cir. 1968) (advertising in a New York newspaper distributed in forum state does not confer jurisdiction).

Accordingly, defendant’s motion to dismiss must be granted.

Edmund V. Ludwig, J.

² Inasmuch as the cases are clear on this point, plaintiff’s request for discovery to develop “the issue of advertising in a national advertising mode . . . [to] satisfy the nexus requirements,” will be denied. Pltf. mem. at 3. See also Molnlycke Health Care AB v. Dumex Medical Surgical Products Ltd., 64 F. Supp. 2d 448, 454 (E.D. Pa. 1999) (request for discovery denied where defendant stated it had never sold the product in question in Pennsylvania).